

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

James I. Miller, D.O.
Holder of License No. 2264

FIRST SUPPLEMENTAL ORDER
CASE NO. 1589

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

14
15
16
17
18
19
20
21
22
23
24
25
26

18
19
20
21
22
23
24
25
26

20
21
22
23
24
25
26

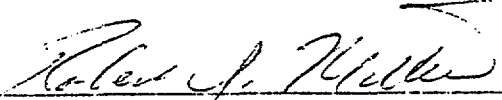
22
23
24
25
26


25

26

1 2. Pursuant to paragraph 10 of the Board's order for
2 disposition of Case No. 1589, the Board designates as its
3 initial "reviewing physician", Thomas Kalos, D.O.; and, the
4 Board reserves the right to replace Dr. Kalos, at its
5 discretion, in the event that the Board finds it necessary or
6 appropriate to designate another physician to serve in the
7 capacity of the Board's "reviewing physician."

8 DATED and effective this 29th day of April, 1994.

9
10
11 
12 Robert J. Miller, Ph.D.
Board Executive Director

13 Copy of the foregoing mailed
14 this 5th day of ~~April~~, 1994,
to: 

15 James I. Miller, D.O.
16 6707 North 19th Avenue, No. 205
Phoenix, Arizona 85015

17 Stephen W. Myers
18 Attorney at Law
2 North Central, No. 1200
19 Phoenix, Arizona 85004-2305

20 Copy mailed by interagency mail
to:

21 Michael N. Harrison
22 Assistant Attorney General
1275 W. Washington, CIV/LES
23 Phoenix, Arizona 85007
24
25

26 0902A.102-103

5. Respondent acknowledges and agrees that, upon signing this Agreement, he has accepted all terms and conditions set forth and he may not withdraw said acceptance, notwithstanding the communication of his desire to withdraw his acceptance prior to the Board voting upon its acceptance of the Agreement.

6. Any admissions made by Respondent are solely for the stipulated disposition of this matter and are not intended as an admission against his interest or an admission of liability in any civil or criminal litigation.

7. Respondent is aware that any violation of said Order constitutes unprofessional conduct pursuant to A.R.S. § 32-1854(26) and may result in disciplinary action pursuant to A.R.S. § 32-1855.

ACCEPTED this 19 day of April, 1994.

JAMES I. MILLER, D.O.

Reviewed and approved as to ~~form~~ by:

STEPHEN W. MYERS
Attorney for Dr. Miller

FINDINGS OF FACT

1. The Board of Osteopathic Examiners of the State of Arizona ("Board") is the duly constituted authority for the regulation and control of the practice of osteopathic medicine in the State of Arizona.

1 2. James I. Miller, D.O. (hereinafter, "Respondent")
2 is the holder of License No. 2264 for the practice of medicine
3 in the State of Arizona.

4 3. On or about May 7, 1993, the Board received
5 information which suggested that Respondent might have committed
6 an act or acts of unprofessional conduct as defined in A.R.S.
7 § 32-1854, i.e., malpractice resulting in the death of a patient
8 or any conduct or practice which does or might constitute
9 a danger to the health, welfare or safety of the patient.

10 4. In the case under investigation, the patient was
11 an 85 year old female with several days of abdominal pain. The
12 referring family practitioner decided to treat the patient with
13 systematic treatment for two to three days prior to
14 hospitalization. Respondent was called to see the patient
15 shortly after her admission, at which time she had obvious signs
16 of peritonitis and a rigid surgical abdomen. Her pain was
17 primarily localized in the right lower quadrant, and when
18 abdominal x-rays demonstrated no free air, Respondent explored
19 her with a pre-operative diagnosis of probable perforated
20 appendix. On entering the abdomen, it became apparent that the
21 correct diagnosis was that of a perforated duodenal ulcer that
22 had localized gastric contents in the lower quadrant. Assisted
23 by the referring family practitioner, Respondent attempted to
24 patch the ulcer with omentum. Respondent found that the
25 indurated and inflamed tissues in the perforated bowel would not
26 hold sutures and Respondent then decided to abandon this

1 approach.

2 5. Respondent elected to perform a resection of the
3 ulcer area and do a primary gastroduodenostomy (Billroth I)
4 operation. Although Respondent thought he had identified the
5 ampulla of Vater visually, the post-operative course of the
6 patient later demonstrated that the ampulla and distal common
7 bile duct had been resected with the first part of the duodenum.

8 6. In retrospect the more appropriate course of
9 action for Respondent would have been to (1) use the omental
10 patch of the lesion, (2) use a diverting procedure to exclude
11 gastric contents from the proximal duodenum and (3) perform
12 liberal drainage of the upper abdomen.

13 7. After the first post-operative day, Respondent
14 left town and turned the care of his patient over to an older
15 surgical colleague. He discussed the possibility of a common
16 duct injury with this colleague before leaving. Respondent was
17 away for three days of the patient's post-operative care and
18 when he returned he found her in extremely critical condition in
19 the intensive care unit with multiple organ failure and being
20 managed by a critical care specialist.

21 8. A radioactive biliary scan demonstrated free flow
22 into the abdominal cavity and Respondent arranged to have the
23 patient transferred to a surgeon in Phoenix who specialized in
24 liver and pancreatic transplant surgery. The patient died after
25 this surgeon performed a Whipple procedure and he stated that he
26 also could not identify normal enough tissue to do a lesser

1 procedure.

2 9. The Board has conducted investigative interviews
3 and informal interview hearings with Respondent in attendance
4 concerning the aforementioned patient's treatment by
5 Respondent. The Board has arrived at its findings of fact based
6 upon all of the information provided to the Board and made a
7 part of the administrative record.

8 CONCLUSIONS OF LAW

9 1. The Arizona Board of Osteopathic Examiners in
10 Medicine and Surgery possesses jurisdiction over the subject
11 matter hereof and over James ^{I.}~~E.~~ Miller, D.O., pursuant to A.R.S.
12 § 32-1801, et. seq.

13 2. The Board has authority to enter a final order and
14 to enter into an agreement for the stipulated disposition of
15 this matter pursuant to A.R.S. § 41-1061(D) and § 32-1855(E)(4).

16 ORDER

17 The Board voted to accept the stipulated disposition of
18 this matter on April 19, 1994; and, therefore, IT IS HEREBY
19 ORDERED THAT:

20 1. JAMES ^{I.}~~E.~~ MILLER, D.O. (Respondent) shall be placed
21 on probation and his practice of osteopathic medicine in the
22 State of Arizona shall be restricted as described more
23 specifically hereafter.

24 2. The duration of probation and restriction on
25 practice shall continue until Respondent satisfies all of the
26 conditions listed hereafter; and, thereafter, Respondent may

1 petition the Board by letter for termination or modification of
2 the terms of probation and restriction of practice.

3 3. As part of the terms of probation, Respondent is
4 restricted in his surgical medical practice as described more
5 specifically hereinafter.

6 (A) If Respondent performs any surgical procedure
7 that customarily requires the use of general anesthesia,
8 Respondent may only perform the surgical procedure with the
9 supervision of a "senior surgeon" during the surgical
10 procedure. The senior surgeon shall be a physician licensed by
11 the Arizona Board of Medical Examiners or by the Board of
12 Osteopathic Examiners and shall be a specialist in surgery
13 certified by the American Board of Surgery or the surgery
14 speciality boards(s) recognized by the American Osteopathic
15 Board of Surgery and shall be approved by the Board.

16 (B) The requirement for a senior surgeon shall
17 not apply to the following surgical procedures:
18 hemorrhoidectomy, hernia repair, vascular access devices for
19 long term chemotherapy or hyperalimentation, breast biopsies and
20 removal of pilonidal cysts.

21 (C) The senior surgeon shall be provided by
22 Respondent with written notification of the reason (i.e., Board
23 restriction on medical practice) for Respondent requesting the
24 aforementioned assistance prior to initiating the surgical
25 procedure and the extent of assistance required pursuant to this
26 Order.

1 (D) The senior surgeon is not an agent of the
2 Board; and, Respondent shall be responsible for the professional
3 fee charged by the senior surgeon to supervise the
4 aforementioned surgical procedures.

5 4. Respondent expressly agrees to waive
6 confidentiality concerning all information and reports received
7 or retained by the Colorado Professional Education Program; and,
8 therefore it is hereby ordered that all records of Respondent's
9 participation in any medical training program and in the
10 Colorado Professional Education Program ("CPEP"), including
11 medical skill assessments, psychological and medical reports
12 concerning Respondent, shall be made available to the Board upon
13 request by the Board's executive director.

14 5. Within forty-five (45) days from the date of this
15 Order, Respondent shall submit to a complete psychological
16 evaluation (i.e., to include an evaluation of cognitive, social,
17 emotional and neuro-psychological functioning) to be performed
18 by a psychologist designated by the Board's executive director
19 and performing the psychological evaluation for the benefit of
20 the Board. In compliance with this requirement the following
21 terms and conditions shall apply.

22 (A) Five (5) days (not counting weekends on
23 holidays) after the effective date of this order, the Board's
24 executive director shall mail to Respondent the names of three
25 Arizona psychologist, practicing in Maricopa County, selected by
26 the executive director. Within five (5) days (not counting

1 weekends or holidays) of receipt of said names, the Respondent
2 may select one psychologist to conduct the psychological
3 evaluation of him for the Board; and, Respondent shall (by mail
4 or telephone) give notice of this choice to the Board's
5 executive director. If Respondent fails to give timely notice
6 of his selection, the executive director shall select the
7 psychologist from the three names and so inform the Respondent
8 by correspondence of the psychologist selected.

9 (B) Upon completion of the selection process to
10 designate a psychologist, Respondent shall promptly schedule an
11 appointment for a psychological evaluation and inform the
12 Board's executive director of the date for the appointment. The
13 Board's executive director shall transmit, by cover letter to
14 the psychologist, all relevant documents concerning Respondent
15 and the Board's investigation prior to said appointment date.

16 (C) The designated psychologist shall receive a
17 copy of this Order and shall have access to and/or copies of the
18 complete administrative and investigative file compiled in this
19 matter, including but not limited to all records from "CPEP".

20 (D) Respondent shall provide complete and
21 accurate responses to the aforementioned psychologist, including
22 but not limited to, medical, psychological, psychiatric and
23 counseling treatment history, i.e., names of treating
24 physicians, psychologists, psychiatrists and counselors, dates
25 of treatment and identity of health care facilities and
26 diagnoses. All information and reports compiled as a result of

1 the ordered psychological examination shall be considered
2 confidential and not available for public disclosure unless
3 the Board is expressly directed to make disclosure by court
4 order.

5 (E) Respondent is responsible for paying the
6 expenses associated with undergoing the previously mentioned
7 psychological evaluation and any related expenses, e.g., postage
8 or photocopying charges.

9 (F) The written evaluation report prepared
10 pursuant to this Order is exclusively for the Board's use and
11 benefit. If Respondent wishes to obtain a copy of the report, a
12 written request must be submitted to the Board.

13 (G) Based upon the findings and recommendations
14 of the psychologist, the Board may issue a supplemental Order
15 requiring Respondent to obtain and fully participate in
16 psychotherapy and/or psychiatric treatment to the extent
17 directed by the Board.

18 6. All expenses associated with Respondent
19 participating in any medical education and training program,
20 that is required by the Board, shall be his responsibility.

21 7. Respondent shall, during each of the five (5)
22 calendar years (commencing with the effective date of this Order
23 and including 1994), include the following described activity as
24 part of his annual continuing medical education ("CME") and as a
25 condition of probation.

26 (A) Respondent shall attend and participate

1 completely in the educational programs presented at the
2 Southwestern Surgical Association Annual meeting; and, he shall
3 participate in and complete at least one general surgery review
4 course yearly, such as and comparable to the review course for
5 the Board examinations of the American College of Surgeons at
6 the aforementioned organization's annual meeting; and,

7 (B) Respondent shall annually enroll in and
8 complete the American College of Surgeons Surgical Education and
9 Self-Assessment program; and,

10 (C) Respondent shall maintain documentary proof
11 of compliance with the aforementioned continuing medical
12 education requirements throughout the entire period of
13 probation; and, he shall submit copies of documents establishing
14 attendance at CME and a signed statement avowing completion of
15 courses and mailed by certified mail to the Board's office
16 (attention of the executive director) by December 31 of each
17 calendar year.

18 8. If Respondent wants to perform vascular surgery,
19 he shall attend a minimum of twenty (20) hours of CME directly
20 related to the subject of vascular surgery procedures and
21 diagnosis related thereto prior to January 1, 1995; and,

22 9. Respondent shall at all times implement the
23 following procedures for maintaining complete office and patient
24 records that follow the "SOAP" format, i.e., sections that
25 document subjective complaints, objective findings and
26 assessment that includes a differential diagnosis and a plan for

1 further care or steps in a work-up.

2 10. During the first three years of probation,
3 Respondent will be subject to review of all aspects of his
4 medical practice. Said review shall primarily be in the area of
5 surgical practices and procedures and maintenance of patient
6 records. The Board shall designate the reviewing physician, who
7 shall undertake this review as the Board's designated
8 representative and in the following manner.

9 (A) A random review of at least ten patient
10 records selected at the reviewing physician's discretion shall
11 be conducted every 120 days, commencing on the first of the
12 month after the Board designates the reviewing physician. The
13 review of patient records should focus on Respondent's
14 pre-operative assessments, intraoperative dictations and
15 hospital records to assess daily care and order writing.
16 Respondent shall fully cooperate with the reviewing physician
17 and provide copies of patient records and related information.

18 (B) The reviewing physician shall prepare a
19 written report for the Board and a copy to Respondent reflecting
20 any relevant findings or opinions concerning Respondent's
21 medical practice activity and compliance with this Order.

22 (C) In the event that the reviewing physician's
23 report discloses deficiencies in Respondent's medical knowledge
24 or proficiency, the Board may order, at its discretion and
25 without expressly making any finding of unprofessional conduct,
26 the completion of an additional twenty-five hours of CME per

1 year during the period of probation. This provision shall not
2 limit the Board in taking other disciplinary action in the event
3 that it has cause to invoke its statutory authority.

4 (D) The reviewing physician's professional fee
5 for reviewing activities shall be paid for by Respondent.
6 Unless specifically authorized by the Board to the contrary, the
7 total time may be charged for the reviewing physician's activity
8 should not exceed eight hours for each scheduled review unless
9 otherwise ordered by the Board. The hourly rate shall not
10 exceed \$125.00 per hour. The aforementioned time limitation
11 includes preparation of a report to the Board but does not
12 include any personal appearance before the Board to provide
13 information which may be separately charged to the Respondent by
14 the reviewing physician.

15 11. As a further term of probation, Respondent shall
16 appear before the Board, to discuss and respond to any questions
17 concerning his medical practice upon receipt of reasonable
18 notice (i.e., a minimum of three business days) requesting his
19 appearance. Respondent's request for a continuance, when
20 supported by good cause, (e.g., attendance at CME seminars and
21 illness) may be granted by the Board.

22 12. Respondent shall, as a condition of probation,
23 fully comply with the statutes and rules governing the practice
24 of osteopathic medicine.

25 13. Failure to comply with the terms of probation and
26 restriction of practice shall be cause for filing a formal Board

1 Complaint and Notice of Hearing pursuant to A.R.S. § 32-1855(F);
2 and, said failure to comply with the Board's terms of probation
3 and restriction of practice shall constitute conduct by
4 Respondent which does or might constitute a danger to the
5 health, welfare and safety of his patients or the public in
6 violation of A.R.S. § 32-1854(19).

7 DATED and effective this 29th day of April, 1994.

8 ARIZONA STATE BOARD OF OSTEOPATHIC
9 EXAMINERS IN MEDICINE AND SURGERY

10 [SEAL]

11 BY Robert J. Miller

12 Robert J. Miller, Ph.D.
13 Executive Director

14 Copy of the foregoing Agreement for
15 Entry of Board Order mailed by
16 Certified Mail this 5th day of
May, 1994, to:

17 James I. Miller, D.O.
18 6707 N. 19th Avenue, #205
19 Phoenix, AZ 85015

20 Stephen W. Myers
21 Attorney at Law
22 Two N. Central, #1200
23 Phoenix, AZ 85004-2305

24 Copy mailed to the Board's Counsel,
25 Michael N. Harrison
26 Assistant Attorney General

0902A/18-30